IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

No. 920

STATE BANK OF HARDINSBURG,
Petitioner,

vs.

CHANCEY RAY BROWN & MARY G. BROWN,
Respondents.

ON CERTIORARI TO THE CIRCUIT COURT OF APPEALS, SEVENTH CIRCUIT.

RESPONDENTS' BRIEF.

SAMUEL E. COOK,
Huntington, Indiana,
Counsel for Respondents.

SUBJECT INDEX.

		Page
1.	Preliminary	1
2.	Statement of the Case	4
3.	Questions Presented	5
4.	Summary of Argument	5
5.	Argument Proper and Points	11

TABLE OF CASES CITED.

Borchard vs. California, 310 U.S. 180 16

Constitution, Art. 1, Sec. 8—Clause 4 14

Eleventh (11th) U.S.C.A. 203 11

John Hancock vs. Bartels, 308 U.S. 180 16

Kalb vs. Feuerstein, 308 U.S. 433 16

(Va.) Wright Case, 300 U.S. 466 19

First (Ind.) Wright vs. Union Central, 304 U.S. 502 16

Second (Ind.) Wright vs. Union Central, 311 U.S. 273 16

IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

No. 920

STATE BANK OF HARDINSBURG,
Petitioner,

vs.

CHANCEY RAY BROWN & MARY G. BROWN,
Respondents.

ON CERTIORARI TO THE CIRCUIT COURT OF APPEALS, SEVENTH CIRCUIT.

RESPONDENTS' BRIEF.

PRELIMINARY.

(a). Rule 27 (e) of this Court provides the Appelant's Brief shall contain an assignment of the errors intended to be urged.

Revised Rules 27 (e).

(b). Subdivision 6 of Rule 27 further provides:

"6. When there is no assignment of errors, counsel will not be heard, except at the request of the court; and errors not specified according to this rule will be disregarded, save as the

Court, at its option, may notice a plain error not assigned or specified."

(c). The Petitioner's Brief does not contain an assignment of errors. Hence, the Court should disregard the alleged errors not assigned and decline to disturb the decision of the Court below.

(d). The Court gave the Respondents one week from October 15, 1942, to prepare and file their Brief. On October 16, 1942, they mailed to the Clerk of said Court their motion to dismiss the appeal on the above grounds. They must have this Brief printed at once to be in time. Under such conditions in presenting their brief on the merits, they do not intend to waive the grounds in said motion to dismiss, but claim the right to present their motion and this Brief too.

(e). This is a proceedings to enforce the remedial Acts of Congress and the recent decisions of this Court to save American Farm Homes. This Court has held the "distressed farmer" is entitled to the benefits of these Acts without the assistance of Attorneys or the expense of litigation and it was the duty of the Creditor herein to co-operate in granting relief to the Debtors. The record will show it has not done that but for over two years has tried to deprive the Debtors of the right to reside on their farm for three years with the right to redeem it. That it will further show said Creditor has waged intense litigation against them in the State Court (of Indiana), the Circuit Court of Appeals for the 7th Circuit (Chicago), to deprive them of the benefits of the Acts of Congress and try to cause them to lose their Home.

(f). To support the above statement we cite the

decision of this Court in Kalb vs. Feuerstein 308 U.S. 433 (Jan. 2, 1940).

The Court held: "Congress set up in the Act an exclusive and easily accessible statutory means for rehabilitating distressed farmers who, as victims of a general economic depression, were without means to engage in formal court litigation. To this end, a referee or Conciliation Commission was provided for every county in which fifteen prospective farmer-debtors requested an appointment; and express provision was made that these Commissioners should "upon request assist any farmer in preparing and filing a petition under this section and in all matters subsequent thereto arising under this section and farmers shall not be required to be represented by an attorney in any proceeding under this section." In harmony with the general plan of giving the farmer an opportunity for rehabilitation, he was relieved—after filing a petition for composition and extension—of the necessity of litigation elsewhere and its consequent expense. This was accomplished by granting the bankruptcy court exclusive urisdiction of the petitioning farmer and all his property with complete and self-executing statutory exclusion of all other courts."

(g). On this point the original Act of March 3, 1933, provided as follows:

"(q). A conciliation commissioner shall upon request assist any farmer in preparing and filing a petition under this section and in all matters subsequent thereto arising under this section

and farmers shall not be required to be represented by an attorney in any proceeding under this section."

So plain that he "who runs may read," but the Creditor preferred to law these—"distressed farmers" instead of giving heed to the commands of the "Supreme law of the land." For these reasons this appeal should be dismissed.

(d) STATEMENT OF THE CASE.

1. This part of the Petitioner's Brief did not set out that the Respondents claim, that under the amended Subsection (n) of Section 75 of the Act of Congress enacted August 28, 1935, where there is a Sheriff's sale of the land, that the time for the filing of the petition in bankruptcy, is extended to the date of the delivery of the deed. And failed to set out words to that effect.

2. That it also failed to set out that the Respondents claimed that said Subsection (n) provided as follows:

"Or where (the) deed had not been delivered, the period of redemption shall be extended"—"for the period necessary for the purpose of carrying out the provisions of this Section." And failed to set out words to that effect.

3. That it also failed to state that said Respondents claimed that Congress had the power to extend said time until said deed was delivered and hence, was a valid law. And failed to set out words to that effect.

4. That said Petitioner erred in claiming in said statement that the statutes of Indiana gave it title to said land and were controlling in this case. And in

failing to state that the Act of Congress in passing amended Subsection (n) of Section 75 in providing the petition in Bankruptcy could be filed prior to the delivery of the deed, made it the Supreme law of the land and hence, that the State law of Indiana could not be used to defeat it.

5. That it also failed to refer to the four recent decisions of this Court upon the question presented in this appeal.

QUESTIONS PRESENTED.

1. In stating its first question contending that the Respondents had no right or equity in the property, it should have stated that the Act of Congress prior to the date of its mortgage had given the Debtors a "right or equity" in this land to bring it into Bankruptcy at any time prior to the delivery of the Sheriff's deed, and thereby save their home.

2. The Petitioner in its second question, contending Subsection (n) was void, claiming it conflicted with the Fifth and Tenth Amendments to the Constitution, should have stated this Court had held said Amendments have nothing to do with this New Bankruptcy Act. That the power of Congress over the "subject of Bankruptcies" is in the class of the greatest powers of the Government. No State law can restrict or be used to defeat its legislation on that subject.

(f) SUMMARY ARGUMENT.

(a). The Federal Constitution has vested in Congress exclusive power over the "subject of bankruptcies." It is one of the greatest powers of Congress. It is in the class of the power to declare War,

to declare an Embargo and to Coin Money, and regulate the value thereof.

This Court has held that in adding Section 75 of the Act of March 3, 1933, to the General Bankruptcy Act of July 1, 1898, providing relief for insolvent farmers, that it intended the following:

> "The development of bankruptcy legislation has been towards relieving the honest debtor from oppressive indebtedness and permitting him to start afresh. By the Act of March 3, 1933, the Congress deliberately undertook the rehabilitation of the debtor as well as his discharge from indebtedness. This legislation for rehabilitation has been upheld as within the subject of bankruptcies."

(b). All of the decisions of this Court hold that Congress is the Judge of the means it will employ in executing and carrying out its constitutional powers. The Constitution is not a self-executing Instrument. It will not enforce itself. The action of Congress in legislation and of this Court in construing it, are required to give life to that Great Instrument. Congress saw the old Subsection (n) was too narrow and did not include certain honest Debtors. Hence, it enacted an amended Subsection (n) on August 28, 1935. (This before the debt was contracted in this cause).

(c). Its purpose was to give relief to insolvent "distressed farmers." Hence, it gave the benefits of these remedial Acts to a class and included the farmer—"where (the) deed had not been delivered, at the time of filing the petition." It is conceded by the Petitioner in its Brief that this clause is a part of said Subsection (n). Hence, it is the duty of the

Courts to enforce every part of an Act. This being a remedial Act for the relief of those who are insolvent and helpless financially, it must be given a liberal construction to carry out the purpose of Congress. This Court has stated that purpose as follows:

> "This Act provided a procedure to effectuate a broad program of rehabilitation of distressed farmers faced with the disaster of forced sales and an oppressive burden of debt"—"The Act must be liberally construed to give the debtor the full measure of the relief afforded by Congress."
>
> Wright Case, 311 U.S. 273.

(d). This Subsection (n) is the Supreme law of the land, "which all Courts"—"State and Federal must observe." That the wisdom of such a law is for the "consideration of Congress alone."

Kalb Case, 308 U.S. 433.

(e). This Court has held that Congress has the power to extend the State period of redemption of one year and thereby deprive the Creditor of the one year period and extend that period to three years. If it can take that one year from the Creditor and compel him to accept three years, it is as plain as the "Noonday Sun" that it could also add to the one year here and extend the time to file their petition any time prior to the delivery of the deed, in order to redeem their Home.

(f) This Court has held that Congress had the power to give to the Debtor the superior right to redeem his land at the appraised value of $6000.00 and to discharge him from the payment of the balance of the debt of $10000.00. If Congress can do that to give relief to "distressed farmers," it follows

that it could disregard the one year to file under the State law, and extend the time to file up to the date of the delivery of the Sheriff's deed. Strange that the Petitioner would cite some forty cases, none of which have anything to do with question presented here, and failed to cite these cases. The fact is, it did not cite a single case which holds that Congress did not have the power to enact this clause.

Wright Case, 311 U.S. 273.

The Petitioner slept too long before it had the deed delivered. That was its own fault.

(g). In the first (Ind.) Wright Case it was urged by the Creditor to extend the period of redemption three years and other provisions of Section 75 (s) of the Bankruptcy Act would be a direct invasion of the powers reserved to the States and a violation of the Creditor's property rights theretofore determined by the Courts of the State of Indiana, "in accordance with the law of the State."

This Court brushed aside all that and held:

> "If the argument is that Congress has no power to alter property rights, because the regulation of rights in property is a matter reserved to the States, it is futile. Bankruptcy proceedings constantly modify and affect the property rights established by State law. A familiar instance is the invalidation of transfers working a preference, though valid under State law when made."
>
> Wright Case, 304 U.S. 502 82 L. Ed. 1490 (1501).

In other words (Preferences are valid under State law, but invalid under the Bankruptcy law if made within four months prior to the filing of the petition.

Hence, the Debtors rights under the State law are taken from him by the Bankruptcy Act).

If Congress can take that State right away, it follows it could take away the effect of the one year period provided by the State law and change it and extend the time to file after the end of the State period and prior to the delivery of the Sheriff's deed. That is the exact question in this case, and the Supreme Court has decided it against the contention of the Petitioner. Why did it not cite that case?

(h). The Record shows the Creditor has carried on intense litigation against the Debtors in the State and Federal Courts for nearly two and one-half years, to take this Home from them and deprive them of the benefits of these remedial Acts of Congress. It has "turned Heaven and Earth" and is now waging litigation in this Court to defeat the purpose of Congress. The District Court is a Court of Equity and Conscience. The Petitioner has attempted to make this remedial Act a "dead letter" and no law at all. Hence, it does not come into this Court in a proper manner. It has refused to obey the Supreme law. Those demanding equity must have done equity. To adopt the contention of the Petitioner, means the loss of this farm home. To decline to reverse the Court of Appeals, will save it. In this connection it should be stated that the Record shows the Petitioner is attempting to get over $6000.00 worth of land for a debt of about $3000.00.

(i). There is another vital thing, the Petitioner failed to point out in its multitude of citations. (Beware of too many citations. Citations do not make it so). It is this; It is the second clause of said amended Subsection (n) which provides—"or where

(the) deed had not been delivered, the period of redemption shall be extended—for the period necessary for the purpose of carrying out the provisions of this Section." The action of Congress in repeating the provision in the first clause, in the second, conclusively shows this extension was not limited to the date of the deed but made it elastic to be extended by the Court as long as necessary to give the Debtor the benefits of the Acts—Section 75 and amended Subsection (s). Congress intended to not only give the insolvent farmer time to file up to the delivery of the deed, but beyond that date if necessary—to make it doubly sure that the Debtor could redeem his home and retain the possession for three years in order to prepare for redemption. The Petitioner paid no attention to this second provision and never mentioned it. This leaves it no leg to stand on. It never noticed the cases which settle the question, but cited many in which the question here was not presented, or before the Court. Hence, it could not have decided it.

(j). The Petitioner's contention that the Respondents had no equity or right in the land at the time of filing of the petition, is not here nor there. True, the year of redemption had expired but the moment it did these two clauses of Subsection "N," instantly applied and gave them a right or equity in the land and the right to file any time prior to the delivery of said Sheriff's deed. These clauses are the Supreme law of the land and must be observed by the Courts —State and Federal. They must give effect to every part of a statute. What else will be done with these clauses? They are as much the law as any of the preceding clauses of the Subsection and must be applied to this case. What would be the use of Congress

passing this Act for the relief of "distressed farmers" if the Courts refuse to enforce it?

(k). The contention that the Fifth, Tenth and Fourteenth Amendments are violated by these clauses in Subsection (n) is not well taken. This Court held in Wright vs. Union Central, that they did not apply in such bankruptcy proceedings as in the case at Bar.

Wright vs. Union Central
304 U.S. 502.

ARGUMENT, PROPER.

Point I.

Subsection (n) of Section 75 of the Bankruptcy Act of Congress, as amended August 28, 1935, gave the Respondents the right to file their petition prior to the delivery of the Sheriff's deed herein. That this gave the District Court jurisdiction over the real estate herein in bankruptcy, and gave the Respondents the right to the benefits of said Acts to have the possession of and the right to redeem said land as provided in said Act and the Court of Appeals was correct and should be affirmed by this Court.

1. The Respondents rely on the following authorities to support the above point:

Amended Subsection (n) Section 75, enacted August 28, 1935, 11 U.S.C.A. Sec. 203 (n).

Point II.

The clauses extending the time to file prior to the delivery of the deed, was made part of the Frazier-Lemke Act, August 28, 1935, and was in force when the note and mortgage were executed on

February 19, 1938, and applied the instant the year under the State law expired (R. 24).

Point III.

This old Subsection (n) was not broad enough and Congress amended it on August 28, 1935.

It set up a class of conditions and provided persons coming within each, could file petitions as follows:

(a). One having an equity or right in such property. (Congress in extending the time up to the time of the delivery of the deed gave them an equity and right in the land and allowed them to file). This was a matter for Congress to settle and not the Courts.

(b). One who has a control for the purchase of land.

(c). One with a contract for deed or conditional sales contract (for land).

(d). One who had the right or equity of redemption and it had not expired.

(e). Or, where a deed of trust has been given as security.

(f). Or, where the sale has not been confirmed.

(g). And lastly **"or where (the) deed had not been delivered at the time of filing the petition.**

11 U.S.C.A. Sec. 203 (n).
(Black face our own).

2. It would be absurd to contend that Congress intended that each of the class down to (g) should be allowed to file in bankruptcy, but to deny that right to the last one. The Courts must give effect to the last clause as well as to the first. They must give effect to every part of a statute.

(No citation necessary).

3. This last clause is the Supreme law of the land, "which all Courts — State and Federal must observe."

Kalb vs. Feuerstein, 308 U.S. 433.

Point IV.

Congress had the power to extend the period for filing from the end of the state period to the time of the delivery of the deed.

Wright vs. Union Central 304 U.S. 502-518. 82 L. Ed. 1501.

1. The Court said in that case, in substance, that the Respondent contended that disregard of the State period of redemption of one year and extended that period three years "would be direct invasion of the powers reserved to the State' and a "violation of the property rights—theretofore determined by the Courts of the State of Indiana in accordance with the law of that State." This Court brushed that claim aside and said:

> "If the arguments is that Congress has no power to alter property rights, because the regulation of rights, in property is a matter reserved to the States, it is futile. Bankruptcy proceedings constantly modify and affect the property rights established by state law. A familiar instance is the invalidation of transfers working a preference, though valid under state law when made." . . . . .
>
> "It (the Court) may enjoin like action by a mortgagee which would defeat the purpose of

Sec. 75, Subsection (s) to effect rehabilitation of the farmer mortgagor. Citing Wright vs. Vinton Mountain Trust Bank, 300 U.S. at 470, 81 L. ed. 747."

Wright Case, 304 U.S. 502
82 L. Ed. 1490 (1501).

Why did the Petitioner fail to cite that decision? It settles the question here.

2. This decision shows the plenary powers of Congress over "the subject of bankruptcies" can not be restricted by the States and that the laws of Indiana cannot be used to defeat this Supreme law of the land.

3. If there could be any doubt about that power it is settled by the Constitution itself — In enumerating its powers, Congress is first given the power to "establish uniform laws on the subject of bankruptcies."

Constitution Act 1, Sec. 8—Clause 4.

Then the Constitution adds:

"To make all laws which shall be necessary and proper for carrying into execution the foregoing powers" . . . . . .

4. To allow the Petitioner's contention—that the law of Indiana can be used to restrict the powers of Congress, would destroy the National character of our Government. This case is controlled by the Acts of Congress on the "subject of bankruptcies," delegated to that body. This leaves no power over that subject in the States. Congress having the power to select the means it will employ in executing its Constitutional Powers hence, had the power to alter property rights acquired under State Laws, and said

State Law of one year cannot be used to restrict the action of Congress.

5. Congress has lodged in the Courts the discretion to say how much time "was necessary for the purpose of carrying out the provisions of this Section." Meaning Section 75 and its amendment, Subsection (s). It meant the "distressed-farmer" should be given relief and the right to save his home, no difference if it did take some time after the delivery of the deed. Congress had the right to do this, even if it did "alter property rights" under the State law.

Wright Case, 304 U. S. 502-518
82 L. Ed. U. S. 1490 (1499).

Point V.

These two remedial clauses must be read in the light of the purpose of Congress as stated thus:

"The development of bankruptcy legislation has been towards relieving the honest debtor from oppressive indebtedness and permitting him to start afresh. By the Act of March 3, 1933, the Congress deliberately undertook the rehabilitation of the debtor as well as his discharge from indebtedness. This legislation for rehabilitation has been upheld as within the subject of bankruptcies."

Wright vs. Union Central 304 U.S.
502-518. 82 L. Ed 1590 (1499-1500).

Point VI.

Further explanation of the intent of Congress—that this Act is part of the mortgage debt. On that question this Court said:

"The mortgage contract was made subject to consti-

tutional power in the Congress to legislate on the subject of bankruptcies. Impliedly, this was written into the contract between petitioner and respondent. 'Not only are existing laws read into contracts in order to fix obligations as between parties, but the reservation of essential attributes of sovereign power is also read into contracts as a postulate of the legal order.' "

Wright Case, 304 U.S. 502, 82 L. Ed. U.S. 1490 (1500-1501).

1. It follows that the State provision as to the "one year" must yield to and give way to these clauses in the Acts of Congress. It can not be allowed to stand in the way of the Supreme law of Congress.

Point VII.

These two provisions for extension of time must be read and considered with the purpose of Congress stated in the last Wright Case, thus:

"This Act provided a procedure to effectuate a broad program of rehabilitation of distressed farmers faced with the disaster of forced sales and an oppressive burden of debt."

Wright vs. Union Central, 311 U.S. 273.
Citing:
John Hancock vs. Bartels, 308 U.S. 180.
Kalb vs. Feuerstein 308 U.S. 433.
Borchard vs. California Bank, 310 U.S. 311.

Point VIII.

Also "the Act must be liberally construed to give the

debtor the full measure of the relief afforded by Congress."

Wright vs. Union Central, 311 U.S. 273, 85 L. Ed. 184.

Point IX.

"The States cannot, in the exercise of control over local laws and practice Vest State Courts with power to violate the Supreme law of the land." . . . .

(b). "The constitution grants Congress exclusive power to regulate bankruptcy and under this power, Congress can limit the jurisdiction which Courts, State or Federal can exercise over the person and property of a debtor who duly invokes the bankruptcy law." . . . . .

(c). "Congress set up in the Act an exclusive and easily accessible statutory means for rehabilitating distressed farmers who, as victims of a general economic depression, were without means to engage in formal court litigation."

Kalb vs. Feuerstein 308 U.S. 433.

Point X.

It follows as the "night the day" that the Respondents derive their right to file in bankruptcy after the end of the State period, from the Acts of Congress, the superior law and not from the State law. The Petitioner fell into the error of trying to make the case turn on the State law instead of the Federal law. The latter is controling here. It applies to the question and the State law does not.

This is a bankruptcy case and the Bankruptcy law is the only solution of the question presented.

Kalb Case 308 U.S. 433.

Point XI.

To properly decide a case the Court must apply the right theory of the same. It must determine what law applies and is controling and follow that and turn away from that which does not apply. With the wrong theory and the law which does not apply, no case can be decided correctly.

(a). Twenty pages of the Petitioner's Brief is taken up in the citation of over forty cases and argument thereon.

We have only examined them as set out in the Brief. It follows that it discusses and exaggerates a number of questions not presented here at all. These cases no doubt decided correctly the questions before the Court in each. But the question presented here of the superiority of this Bankruptcy Act over State laws was not before the Court in either of them. Hence, the Courts could not have decided that vital question.

Hence, it would be a waste of time to try to reconcile these cases with the cases cited by the Respondents which apply to and directly decide the question presented in this appeal. The former will have to be excluded, and cast out.

(b). The Brief also places great stress on the dissenting opinion. It is also wrong because it does not apply the right theory. Following the wrong theory led to a wrong decision. And the dissenting Judge never referred to the last four recent de-

cisions of this Court which apply directly to and settle the question presented here. The Petitioner tried to "play Hamlet by leaving him out."

Such a decision as the Petitioner urges would be a shock to the conscience. It would defeat the purpose of Congress in enacting it and make the Act a sham and a "dead letter."

An examination of the majority opinion will show it based its decision on the right given in Subsection (n) of the Bankruptcy Act of August 28, 1935, to file any time prior to the delivery of the deed and that Congress had the power to so provide.

That Act means what it says. There the two clauses stand. They give this right. The Court must give effect to these clauses, the same as that which precedes them. It has no power to disregard or blot them out. It is conclusively presumed that Congress inserted these two clauses for some purposes—to allow the Debtor to save his home. These clauses are not mere idle words.

They were inserted for the sole purpose of saving farm Homes, and intended to apply to the case at Bar. No law will be violated by affirming the opinion below and a farm home will be saved. This Court has held that it was the . . . . . "broad design of the Act to aid and protect farmer-debtors who were victims of the general economic depression."

Wright Case; 311 U.S. 273
Citing (Va.) Wright vs.
Vinton Mountain Trust Bank.
300 U.S. 466.

This Court has also held that in cases where the

debt exceeds the value of the security, the Creditor is entitled to no more than said value and then adds these significant words:

> "There is no constitutional claim of the Creditor to more than that. And so long as that right is protected, the Creditor certainly is in no position to insist that doubts or ambiguities in the Act be resolved in its favor and against the Debtor. Rather the Act must be liberally construed to give the Debtor the FULL MEASURE OF THE RELIEF AFFORDED BY CONGRESS—(John Hancock vs. Bartels **supra** Kalb vs. Feuerstein 308 U.S. 433), lest its benefits be frittered away by narrow formalistic interpretations which disregard the spirit and letter of the Act." (Capitals our own).
>
> Wright vs. Union Central
> 311 U.S. 273 (Dec. 9, 1940)

This Court also in speaking of the contest of the Debtor with the Creditor:

> "This race of diligence with a Creditor, for which customarily he would be poorly equipped."
>
> Wright Case, 311 U.S. 273.

Thus the Court considered the financial power of the Creditor above the power of the insolvent Debtor.

The schedules filed in bankruptcy show that the debt to the Petitioner is only something over $3000.00, while the 125 acres of land was valued at $6000.00. (It is well known it is worth more now). It is subject to a first mortgage of $725.00 and other small amounts. No wonder the Petitioner has made

such a fight here. In stating the case, why did it omit these facts?

(R. Judgment 28, 29, 30)
(R. 17 value land).

Time will not permit further discussion.

Enough has been said.

We hope we have aided the court in its great labors.

Wherefore they pray the Court to dismiss the appeal, or to affirm the judgment of the Circuit Court of Appeals.

Respectfully submitted,

SAMUEL E. COOK,
Counsel for Respondents,
Huntington, Indiana.

Pp. 1, 5, 6.

SUPREME COURT OF THE UNITED STATES.

No. 23.—October Term, 1942.

State Bank of Hardinsburg, Petitioner, *vs.* Chancey Ray Brown and Mary G. Brown. | On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

[November 16, 1942.]

Mr. Justice Roberts delivered the opinion of the Court.

The court below has construed § 75(n) of the Bankruptcy Act[1] as bringing within the court's jurisdiction property mortgaged by the debtor as to which, after foreclosure, the debtor's equity of redemption had expired.[2] Because of conflict of decision[3] we granted certiorari.

Subsequent to the adoption of § 75 the respondents borrowed $2,500 from the petitioner and gave a promissory note secured by mortgage on their farm in Indiana. In a foreclosure proceeding in an Indiana state court petitioner obtained judgment November 20, 1939, ordering that the property be sold to satisfy the debt. May 25, 1940, the sheriff sold the farm to the petitioner. The respondents, who had not redeemed, filed their petition under § 75 on May 28, 1940, listing the farm in their schedules.

June 1, 1940, the sheriff executed and delivered his deed to the petitioner and, June 30, 1940, petitioner filed, in the District Court, a motion to strike the farm from the schedules on the ground that, at the date of the petition, the respondents had no right or equity in the property as the period of redemption provided by State law expired at the time of the sheriff's sale. The court granted the motion and struck the property from the schedules. The Circuit Court of Appeals, by a divided court, reversed the judgment.

Section 75(n), so far as pertinent, provides:

---

[1] 11 U. S. C. § 203.

[2] 124 F. 2d 701.

[3] Glenn v. Hollums, 80 F. 2d 555; Shreiner v. Farmers Trust Co., 91 F. 2d 606. Compare In re Randall, 20 F. Supp. 470; Buttars v. Utah Mtg. etc. Co., 116 F. 2d 622.

Mortgage Loan Corp

"The filing of a petition . . . praying for relief under . . . [this section] shall immediately subject the farmer and all his property, wherever located, for all the purposes of this section, to the exclusive jurisdiction of the court, including all real or personal property, or any equity or right in any such property, including, among others . . . the right or the equity of redemption where the period of redemption has not or had not expired, or where a deed of trust has been given as security, or where the sale has not or had not been confirmed, or where deed had not been delivered, at the time of filing the petition.

"In all cases where, at the time of filing the petition, the period of redemption has not or had not expired, or where the right under a deed of trust has not or had not become absolute, or where the sale has not or had not been confirmed, or where deed had not been delivered, the period of redemption shall be extended or the confirmation of sale withheld for the period necessary for the purpose of carrying out the provisions of this section."

The applicable statute of Indiana is Chapter 90 of the Acts of 1931.[4] Although this statute appears not to have been construed by the State courts, it seems plain that under its provisions a sale in foreclosure can not be had until one year after the institution of the proceedings and that a sale, then made, cuts off all equity of redemption. The court below so conceded.

The question then is, should § 75(n) be so read that, although the debtor has no interest or equity in the land which has been sold, and is at most a trustee of the bare legal title, the land is to be drawn into the bankruptcy if the sheriff has not delivered his deed at the date of the initiation of the proceedings. The respondents insist that the section literally so provides and should be given effect accordingly. The petitioner replies that the fair meaning of the section as a whole is that only if the debtor still retains an equity of redemption does the land come under the bankruptcy jurisdiction. It adds that if the language be of doubtful import the legislative history fully supports the construction for which it contends. We hold with the petitioner.

Section 75(n), after declaring that all the debtor's property shall come under the exclusive jurisdiction of the bankruptcy court, adds that any equity or right in such property shall be within the court's jurisdiction. It then attempts to detail such rights by a clause opening with the phrase "including, among

[4] Burns Indiana Statutes 1933, §§ 3-1801 to 3-1809, inclusive.

others, . . . the right or the equity of redemption where the period of redemption has not or had not expired, . . ." This language would seem adequate to vest in the trustee any unexpired equity of redemption and furnish the basis for dealing with the property subject to such equity of redemption. Apparently out of an excess of caution the sentence then proceeds to catalog certain instances where, under state law, some act or thing has not occurred whose occurrence is essential to the termination of the equity of redemption. Thus the section proceeds "or where a deed of trust has been given as security, or where the sale has not or had not been confirmed, or where deed had not been delivered, at the time of filing the petition." It is, of course, common knowledge that, in various states, one or other of the events mentioned is necessary finally to cut off the equity of redemption.

The second paragraph of the section merely extends the period of redemption in cases where, at the time of filing the petition, the period of redemption has not or had not expired. Here again, however, in an excess of caution, the statute provides, after mentioning the expiration of the period of redemption, "or where the right under a deed of trust has not or had not become absolute, or where the sale has not or had not been confirmed, or where deed had not been delivered, the period of redemption shall be extended" . . . It seems clear that if no right of redemption exists there can be no period of redemption to extend.

A fair reading of the entire section indicates a clear intent to extend the bankruptcy jurisdiction over all property which still remains subject to redemption under state law at the time of filing the petition. The section does not evidence any intent on the part of Congress to bring back into the bankruptcy proceeding property which was once owned by the bankrupt and as to which his ownership and interest has been extinguished, unless such intent can be drawn from the provisions qualifying the general words of the section. We think that if Congress intended that a bankruptcy might reach back into the past and bring under the court's jurisdiction a former interest in property, which, under state law, had irrevocably passed to a third person, it would have so stated in terms too clear to leave any doubt.

If it be conceded that the construction of the section is doubtful, the legislative history is overwhelmingly in support of the view we have stated.

Subsection (n) as originally enacted[5] provided that the filing of a petition under § 75 "shall subject the farmer and his property, wherever located, to the exclusive jurisdiction of the court." In administering this section the federal courts held diverse views as to their power to deal with the equity of redemption of a mortgagor after foreclosure.[6] When Congress came to amend the Act to meet the decision of this court in *Louisville Joint Stock Land Bank* v. *Radford*, 295 U. S. 555, it had in mind the fact that in many states a deed of trust is used as a method of giving real estate security for loans whereunder the trustee may make a sale; that in some states the equity of redemption exists until a deed has been delivered; that in others it expires with the actual sale under foreclosure; that in others it expires when the sale has been confirmed by the court and that in some, although all of these acts have been performed, the debtor has a right to relief during a specified period after confirmation of sale, delivery of deed and entry into possession by the purchaser.[7] The Committee Reports in the House and Senate[8] with respect to the proposed amendment evince a purpose to amend the existing law so as to render it clear that, whatever the right of redemption under state law, the bankrupt and his estate were to have the benefit of that right. Referring, *inter alia*, to the amendments to subsection (n), the House report states:

"These other amendments are largely clarification, and have become necessary because of the diverse rulings and holdings of the various United States district courts in the construction of section 75. Some of these courts have held that the farmer debtor could not take advantage of the act after foreclosure sale, and during the period of redemption. Some of these courts have refused to permit the farmer in that position to file his petition although under the law of his State he was in possession, entitled to rents and profits, and in full control of the property and could redeem it within the period allowed.

"Again, other courts have held that the farmer could not take advantage of the act during the period of moratorium established by a State, while others have held that the debtor could not take advantage of the act after sale, but prior to confirmation, although in all of these cases if the debtor had the money, and were in a position to pay, he could redeem, and save the property.

[5] 47 Stat. 1473.

[6] See 99 A. L. R. 1390-1393.

[7] See Jones, Mortgages (8th Ed.) §§ 1695-1746; Wiltsie, Mortgage Foreclosure (5th Ed.) § 1199.

[8] H. R. Report No. 1808, 74th Cong., 1st Sess.; S. R. 985, 74th Cong., 1st Sess.

"It is clear that these courts are reasoning too technically, and have failed to carry out the intention of Congress, which was to protect the farmer's home and property, and at the same time to protect the creditor. On the other hand, other courts have held just the opposite, and have given full protection, and carried out the intent of Congress. Under this condition, we think it is admitted by all that there should be uniformity."

The language of the Senate Report goes into somewhat more detail but is of the same purport. When the amendments were before the Senate, Senator Borah, a member of the Committee, explained them to the Senate in the following language:[9]

"In the first place, however, it ought to be said that we undertook to make some amendments in section 75 before we got to subsection (s). These amendments are for the purpose of clarifying section 75. Some of the courts have held that the farmer debtor could not take advantage of the act after foreclosure sale and during the period of redemption. The bill undertakes to clarify it so as to permit the farmer to take advantage of section 75 after foreclosure and during the period of redemption.

"Some of the courts also refused to permit the farmer who was in that position to file his petition, although under the law of the State he was in possession and full control of the property and could redeem it during the period of moratorium established by the States. One of the amendments to section 75 takes care of that objection which was raised by the court.

"Amended subsection (s) construes, interprets, and clarifies both subsections (n) and (o) of section 75. By reading subsections (n) and (o) as now enacted, it becomes clear that it was the intention of Congress, when it passed section 75, that the debtor and all of his property should come under the jurisdiction of the court of bankruptcy, and that the benefits of the act should extend to the farmer prior to confirmation of sale and during the period of redemption. In other words, the amendments provide that the farmer may avail himself of the act after foreclosure and during the period of redemption, and may also avail himself of the act during the period of the moratorium provided for him within the State."

The law of Indiana gives the debtor a year from the institution of foreclosure suit within which to redeem and terminates his right and interest in the property at the sale. The delivery of a deed by the sheriff, therefore, becomes a ministerial act which he can be compelled to perform.[10] Such delivery constitutes mere record

[9] Cong. Rec. Vol. 79, Pt. 6, p. 15632.

[10] Jessup v. Carey, 61 Ind. 584, 592; Hubble v. Berry, 180 Ind. 513, 519; State ex rel. Miller v. Bender, 102 Ind. App. 183.

evidence of the purchaser's title which is perfect from the date of sale. As the sale cut off all rights of the debtor § 75(n) does not bring the property within the jurisdiction of the bankruptcy court.

The petitioner urges that the construction given the section by the court below would render it unconstitutional. The view we take of the meaning of the statute makes it unnecessary to consider this contention.

The judgment of the Circuit Court of Appeals is reversed and that of the District Court is affirmed.

Mr. Justice MURPHY, dissenting.

Mr. Justice BLACK, Mr. Justice DOUGLAS and I cannot agree with the opinion of the Court. Section 75(n) subjects to the exclusive jurisdiction of the bankruptcy court all property in which the petitioning farmer-debtor has any equity or right "including, among others . . . the right or the equity of redemption where the period of redemption has not or had not expired, . . . or where deed had not been delivered, at the time of filing the petition". Conceding that respondents' equity of redemption was cut off under Indiana law prior to the filing of their petition, the deed had not been delivered at the time of filing. Respondents thus come within the exact terms of § 75(n), and the property should not have been struck from their schedules.

We have said that doubts in §75 are to be settled in the debtor's favor, and that it "must be liberally construed to give the debtor the full measure of the relief afforded by Congress, lest its benefits be frittered away by narrow formalistic interpretations which disregard the spirit and the letter of the Act." *Wright* v. *Union Central Ins. Co.*, 311 U. S. 273, 279. But we are now told that the spirit and the letter of § 75(n), especially the phrase, "or where deed had not been delivered", may be disregarded upon a "fair reading of the entire section" and a consideration of its legislative history, both of which, it is claimed, disclose that Congress did not intend the benefits of § 75 to extend beyond the expiration of the equity of redemption by force of state law, the above-quoted phrase being added, "apparently out of an excess of caution", to provide for those states in which the equity of redemp-

tion survives until the delivery of a deed. If Congress so intended, its words were poorly chosen. Congress could easily have declared that bankruptcy jurisdiction does not survive the extinguishment of the equity of redemption under state law, whether that extinguishment is accomplished by sale, confirmation, or the delivery of a deed. Instead Congress used the disjunctive "or". That Congress did not so intend is clear from the legislative history of the Act. The true Congressional purpose was "to protect the farmer's home and property, and at the same time to protect the creditor."[1] This purpose is best achieved by giving effect to the precise words of § 75(n). The farmer is given a chance to rehabilitate himself so long as he has any vestige of a right in the property, call it "bare legal title" or what you will. The creditor is protected because the value of the property remains, under adequate safeguards provided by the Act, as security for the debt. "There is no constitutional claim of the creditor to more than that." *Wright* v. *Union Central Ins. Co.*, 311 U. S. 273, 278.

[1] H. Rep. No. 1808, 74th Cong., 1st Sess., p. 2. See also S. Rep. No. 986, 74th Cong., 1st Sess., p. 2.